

FOR MYSORE STATE

Home (1952) Department.

22

R SERIES.

G.O. NO.

2252

Dated

4.8.52

passed by

[Despatch Abstract.]

Criminal cases M.G.S.T. ACT 39 S.H. Coondapur Taluk & Town
Sri K. Sessa Shet Non payment of tax for 49-50 Prosecution
before Sub Divisional Magistrate Acquitted proposals for
appeal submitted.

15

4 Read: From the CTO. South Kanara Re.2306/52 d/16-6-52
From the Dy. Commr. Coimbatore Ref. B.2854/52 d/25-6-52

126100

Submitted to the Government.

2. The Board submits that the prosecution in this case was launched as the dealer did not pay the tax within 21 days from the date of service of the demand notice as required under rules. The criminal court cannot therefore acquit the accused on the ground that the prosecution is premature. The Board also submits that if the acquittal is not now questioned, it will be a bar to future collection of tax due. Hence the Board requests that the Govt may be pleased to instruct the Public Prosecutor Madras to file an appeal against the judgment of the Sub Divisional Magistrate Coondapur South Kanara Dt. in C.C No.234/51 on his file.

- for Secy. CT.

10
✓ The Secy. to Govt. Home Dept. with enclosures in original.
-do. Rev. Dept.

pr. 10.7. Ne
10.7

Copy of Ref. B.2854/52 d/25-6-52 from Dy. Commr. Coimbat re.

Sub: M.J.S.T. Act. S. Kanara Dt. Chondapur Tk and Town Tesha
Shet (Sri) K. Non payment of tax prosecution before S.D.,
Acquittal report.

Ref: From the CTO. S.^Aanara C.No.2306/52-Ae d/16-6-52.

I send herewith the report of the CTO. S. Kanara cited above with the enclosures referred to therein.

2. The Magistrate has held that the complaint filed by the CTO is premature and has on that ground acquitted the dealer. The points for clarification are:

1) Whether, as argued by the Magistrate, it is incumbent on the ATO, to watch the filing of appeals before the CTO, and the Sales Tax Appellate Tribunal and to wait for the final disposal of such appeal petitions (if any) If the Magistrate's argument is to be accepted, the time of 21 days allowed in the Act for the payment of the sum demanded will be practically of no significance whatever, as the ATO cannot compound the offence or file a charge sheet after the expiry of the above period. The dealers are allowed 30 days' time for filing an appeal before the CTO. and 15 days for a CTO's decision for an appeal to the Sales Tax Appellate Tribunal or a revision.

petition before the Dy. Commr. and another 60 days from the decision of the Dy. Commr for revision before the Board, besides time taken for securing copies of orders in each case from the authorities concerned. Each appellate or revisional authority may take about 2 to 3 months for the disposal of the appeal or revision. This means that a prosecution against a defaulter can be thought of only after about a year or more

ii) Whether the issue of a stay order by an appellate or revisional authority in cases where the matter has already been taken to a criminal court under Sec. 15 can have any effect on such proceedings in the Court

In this particular case the Sales tax Appellate Tribunal granted an interim stay order on 10-12-51 while the complaint had been filed on 31-10-51. The offence with which the accused was charged before the Sub Divisional Magistrate was committed long before the grant of stay order. Hence the issue of a stay at a later date cannot affect the criminal proceedings which ~~are~~ were already before the court. Normally within the interval between the filing of the charge sheet and the date of receipt of the stay order, the case could even be disposed of by the court.

iii) The Criminal Court is now definitely prohibited from going into the merits of the asst. (Vide Sec. 16-A of the Act) Excess tax, if any, collected by it as fine from the accused dealers will certainly be refunded either in cash or by adjustment in accordance with the rules with reference to the final decision of the appellate or revisional authorities. The conviction and sentence of fine are for the offence of non-payment of tax within the time statutorily prescribed for such payment and the parties will not lose the excess tax collected from them in any case as all such excess collections are refundable.

3. The question whether any appeal against the acquittal should be filed in the present case may be considered by the Board in consultation with the Govt. Pleader, Madras.

4. The connected asst. file has not been submitted by the CTO. as it has to be sent to the sales Tax Appellate Tribunal in connection with the appeal filed by the accused dealer.

5. The only way, by which resorts to criminal courts for the realisation of arrears can be minimised, is to invest the assessing officers with the powers of Revenue officers of equal status to take action under the Madras Revenue Recovery Act 1864. A suggestion to this effect has already been sent up by me in my Ref.B.1279/52 d/15-6-52 for the consideration of the Board

/true copy/

5

COPY of Ref. C.No.2306/52. A2., dated 16.6.52 from the Commercial tax officer, South Kanara, Mangalore to the Secy. to the Commr. of Comm. taxes, Madras thro' the Dy. Commissioner, C.T., Coimbatore.

Subject

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M.G.S.T.ACT; - Coondapur taluk - Coondapur taluk - Coondapur town - Sessa Shet (Sri) K. - Non payment of tax - Prosecution before the Sub. Divisional Magistrate - Coondapur - Acquittal - report - submitted. ..

(K) In submitting herewith the report of the Assistant Commercial tax officer, Coondapur Ref. C.R.99/51-52 dated 21.5.52 and a certified copy of the judgment of the Sub Divisional Magistrate, Coondapur dated 31-3-1952 in C.C.No.234-51, I beg to state as follows .--

(G) 2. It appears from the Assistant Commercial tax officer's report that tax amounting to Rs.2,651-6-4 was due from the dealer K.Shesha Shet as per 'B' notice served on 13.8.51. The dealer having failed to pay the tax within the time allowed i.e. by 3-9-51, the Assistant Commercial tax officer compounded the offence for Rs.10/- on 30-9-51, and notice of composition was served on the dealer on 17.10.51. In the mean time, the dealer had filed an appeal before me which was dismissed on 15.10.51. The A.C.T.O. laid a charge sheet before the Sub Divisional Magistrate on 31.10.51. Subsequently the dealer filed an appeal before the Appellate Tribunal, and the Tribunal granted interim stay of tax in its proceedings dated 10-12-51. The Sub Divisional Magistrate Coondapur acquitted the accused in his judgment dated 31.3.1952 on the following grounds .--

(i) The compounding notice served on the defaulter was invalid as it was ~~xx~~ issued at a time when the dealer's appeal was pending before the Commercial tax officer.

2) The accused had two month's time to file an appeal to the sales tax Tribunal against the Commercial tax officer's order. Hence the complaint was premature.

3. As regards the first ground it is submitted that the charge against the dealer was non-payment of tax within the time allowed, and not the non-payment of compounding fees. The default occurred on 3-9-51, appeal was dismissed by the Commercial tax officer on 15.10.51 and complaint was filed on 31.10.51. When the complaint was before the Magistrate, the appeal to the Commercial tax officer had already been disposed of, and it could not be said to be premature at that stage.

As regard the 2nd ground, it appears to me that the Sub. Divisional Magistrate was not justified in taking into consideration the stay order passed by the Appellate Tribunal on 10-12-51 during the pendency of the case. The Sub Divisional Magistrate was wrong in saying that the complaint was premature because of the fact that the dealer had time to file an appeal before the Tribunal. There is nothing in the Act which says that criminal proceedings should be filed only after the disposal of the appeal by the Appellate Tribunal.

4. There are a number of cases in this district where the Appellate Tribunal has issued stay orders in the matter of collection of tax several months after complaints were filed against the defaulting dealers by the Assistant Commercial tax officers for non-payment of tax. In such cases, the Magistrates are unwilling to proceed further with the cases and put pressure on the Assistant Commercial Tax officers to withdraw the complaints. It seems to me that the Magistrates are not bound to follow the stay orders of the Appellate Tribunal received during the pendency of the criminal trials. If the complaint is once withdrawn, the order of the Magistrate will have the effect of an acquittal.

and no complaint can afterwards be filed if the dealer does not pay the tax adjudged by the Tribunal. The withdrawal of complaints in such cases will deprive the department of one of the modes of recovery allowed by the Act.

7 5. The present case appears to be a fit one for moving the Government to file an appeal against the acquittal. I have called for the explanation of the Assistant Commercial tax officer for delay in submitting the report, and it will be submitted separately. As all the facts of the case appear in the judgment, I have not submitted the assessment files, which may be called for by the Appellate Tribunal at any time.

enclosures.--

1. A.C.T.O's report dated 21.5.52.
2. Certified copy of judgment dated 31.3.52.
3. Copy of B notice.
4. Copy of compounding notice.

Sd. XXXXXXXX,
for Commercial tax officer,
South Kanara.

-true copy-

R. S. S.
for SECRETARY, (C.T.).

Na
To ?

[126100 Pm/52]

Home Department

9

Memo.No.

Given in
126100 Pm/52

dated 10/7/52

Criminal Justice - Appeal against acquittal - C.C.No.

234 of 1951
Coondapur, South Kanara dt
Application.

on the file of the Sub-Divisional Magistrate

p/cf

Ref:- From the Board of Rev (C.T.)
Sd/-, South Kanara No B 1906/52-1 d 10-7-52

Referred to the Public Prosecutor, Madras for remarks

for which he is requested to offer not later than 25.7.1952

Depd
14/7/52

15/7/52

14/7/52

To
The P.P., Madras.

(With copy of pp-1-3CF and records
apps-7CF and to
be returned with
reply)

Note:- The date of judgment is 31.3.1952. The three months
time expired on 30.6.1952. Six months' time expires on

30.9.1952

2. In GO No 3766 Law (G) d 26.11.1927, the

Govt

16/10
Government directed that instructions
that proposals for appeals against acquittals
should be submitted within two months of
the date of the judgment. In the present
case, the proposals have been received three
months and ten days after the date of the
judgment. The C.T.O. South Kanara has called cp Z p7CF
for the explanation of the A.C.T.O. for the
delay in submitting his report and he
has stated that ^{the} explanation would be
submitted to the Board of Rev separately.
The Board of Rev may be asked to submit
a copy of the A.C.T.O.'s explanation to the
Govt ~~for perusal~~ if eventually it is
decided to file an appeal

14.7.1952
11/5
14.7.52

14.7.52

From

Sri V.T. Rangaswami Ayyangar,
B.A.B.L.,
Public Prosecutor,
Madras..

To

The Secretary to Government,
Home Department,
Madras.

Opn.No.121/52 dated 22-7-1952.

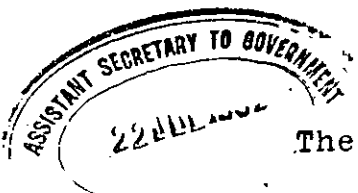
Sir,

Sub:- CRIMINAL JUSTICE - Appeal against acquittal -
C.C.No.234 of 1951 on the file of the Sub
Divisional Magistrate, Coondapur, South Kanara-
Forwarding opinion.

for ante
With reference to Memorandum No.126100-Prisons III/52-1,
Home, dated the 15th July 1952, I have the honour to give below
my opinion.

⑥
2. The papers received for reference are returned herewith.

O_P_I_N_I_O_N.


The view taken by the Sub Divisional Magistrate as regards
the prematurity of the complaint is not at all correct, and the
fact that the appeal has been preferred ^{to} (by) the Commercial Tax
Officer is no ground for not launching prosecution for nonpayment

133834

22/5

of the tax under Sec.15 of the Act.. The learned Magistrate
ought to have held that even if an order of stay for collection
of tax has been passed it could not in any manner affect the
complaint that had already ^{been} filed and so in my opinion an appeal
against acquittal could be filed.

V.T. Ravegnani
Public Prosecutor.

Rd. 22/7
22/7

[126100 Rev III/52]

NV

HOME DEPARTMENT.

13

G.O. No. 2252.

Dated: 4/8/52

CRIMINAL JUSTICE - Appeal against acquittal -

C.C. no 234/51 on the file of the S.D.M., Coondapur

Application - Sanctioned.

1. F. no: - (1) From the ~~Madras~~ Board of Rev (C) Madras
no B. 1906/52-1 d 10.7.52
pp 11-12 cf (2) From the P.P., Madras, Opn. No. 121/52 d 22.7.1952

ORDER:

Under Section 417 of the Code of Criminal Procedure, 1898 the Public Prosecutor, Madras is requested to present an appeal to the High Court against the acquittal by the Sub Divisional Magistrate, Coondapur of the accused in C.C. no 234 of 1951 on his file.

2. The Board of Rev Madras is requested to send a ~~copy~~ ^{certified} copy of the judgment ~~and the calendar~~ ^{and the calendar} referred to in para 1 above direct to the P.P., Madras very urgently.

To the P.P.,
Madras.
With Oin. Ogl.
Copy to the
D.M., Board
of Rev. Madras
(with copy of
pp 11-12 cf.)

NOTE:- The draft order above follows the opinion of the Public Prosecutor, Madras.

Date of judgment

31.3.1952

3 months time expires on

30.6.1952

6 months time expires on

30.9.1952

Draft II submitted overleaf is w.r.t

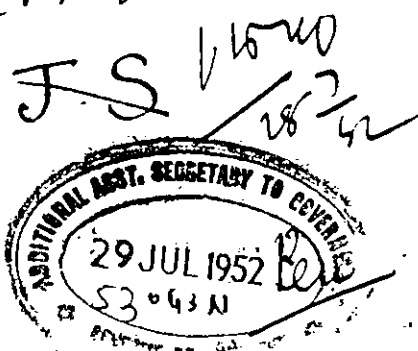
Y on p 10 cf and is for approval

Rev may see before issue

KSJ
26.7.1952

27.7.1952

Rev
26.7.52.



Home 640.126100 for III/52.
28.7.52

Draft II

Memo no. 12610.0 Pms III /52-3 dated 4/8/52

SSHE

Criminal Justice - Appeal against
acquittal - C.C. no 234 of 1951 on the
file of the S.D.M. Coondapur - Application

Ref: From the Board of Rev^{CF}, Madras
no B 1906/52-1 d 10.7.1952 p 1 CF

The Board of Rev^(C.T.), Madras is requested

to submit for perusal of the Govt^{with its remarks} a copy Y p 10 CF

of the explanation of the concerned
A.C.T.O., which will be submitted to

it by the C.T.O., Mangalore with reference

referred to in the concluding paragraph of
his letter no 2306/52.A2. d. 16.6.1952

1/PR of the C.T.O. South Kanara.

26.7.52

lb

26.7.52.

27.7.1952

b no
18/52

The Board of Rev^(C.T.)
Madras.

Wdyr

J. A. S.

Please see the drafts and report about the drafts
about. Both the drafts are accepted in this draft and
return to Home.

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29/7/52

D/S. IP 21.7

AS
Home

Rev 20 NO: 53043 N/52
31-7-52



Home Dept

The draft order at p.1 ante and the
draft memo at p.2 ante may issue

~~top~~
2.8.52
16
2.8.52

2.8.52

Issue as GOR. 2252 Home, d 4.8.52

Issue as Memo No 126100 Pt III/52-3 d 4.8.52

SPECIAL

17

REVENUE DEPARTMENT

Subject.

CRIMINAL CASES - M.G.S.T. ACT 1939 - South Kanara -
Coondapur taluk and town - Sri K. Sesha Shet - Nonpayment of
tax - Prosecution in C.C.No.234/51 on the file of the S.D.M.,
Coondapur - Appeal against - Certain records furnished.

Station: Madras
From

Ref.B.1906/52-2

Dated 9-8-1952.

Sri D. Balasundaram, I.A.S.,
Secy. to the Commr. of Comm. Taxes.

Sri V.N. Kudva, I.C.S., Commr. of Comm. Taxes.

Read:-

Board's Ref.B.1906/52-1 dated 10-7-52. *plante*
Govt. Memo No.126100/Prisons/III of 52-3(Home)
dated 4-8-52. *pre ante*
G.O. Rt. (Home) 2252 dated 4-8-1952. *pre ante*

REFERENCE

XX

XX

p 14 ante

2. With reference to the Government Memo cited, the Board submits that the explanation of the A.C.T.O., concerned is awaited from the C.T.O., and it will be submitted to the Govt. on its receipt. The C.T.O., is being specially reminded in the matter.

XX

XX

147915
pre 126100/12/8

R. Madan
for SECRETARY (C.T.)

To the Public Prosecutor, Madras - para 1
with judgment.

✓ To the Secretary to Govt. Home Dept. (para 2)
To the C.T.O., South Kanara, (para 3)

PEERAN.9/8/52.

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Home Department

13/8/52
Submitted for perusal. (N.R.D. 15.9.1952)
13.8.52

25/8/52
24/9/52

T

REVENUE DEPARTMENT
Subject

CRIMINAL JUSTICE - Madras General Sales Tax Act 1939 - South Kanara - Coondapur Taluk and Town - Sri K. Seshu Shet - Non-payment of tax for 1949-50 - Prosecution before Sub Divisional Magistrate - Acquitted - Certain report - Submitted.

Station: Madras

Ref.B.1906/52-3

Dated 13-11-52.

From

Sri D. Balasundaram, IAS, Secretary, Board of Revenue, CT.
Sri V.N. Kudva, ICS, Commissioner of Commercial Taxes.

Read:

- p. 14 ante*
not in file
I believe
not in file
- (i) Board's Ref.B.1906/52-1 dated 10-7-52.
 - (ii) Government (Home) Memo No. 126100-Prisons III/52-3 dated 4-8-52.
 - (iii) Board's Ref.B.1906/52-2 dated 9-8-52.
 - (iv) Commercial Tax Officer, South Kanara, Ref. 2306/52 A2 dated 11-8-52, with enclosures.
 - (v) Dy. Commissioner, Coimbatore, Ref.B.2854/52 dated 29-9-52.

REFERENCE:

213458
u & 10 below

With reference to the Government memo cited, the Board submits herewith the copies of the explanations submitted by the Assistant Commercial Tax Officer concerned. The Commercial Tax Officer, South Kanara, is taking disciplinary action against the Assistant Commercial Tax Officer.

2.	x	x
3.	x	x

p 14 ante

RECOMMENDATION
for SECRETARY, CT.

To the Secretary to Government, Home Department. (para 1 only)
To the Deputy Commissioner, Coimbatore. (para 2 only)
To the Public Prosecutor, Madras. (para 3 only)

kkp/13.11.

10.13.11

Copy of Ref. 2306/52 A2 dated 11-8-52 from the Commercial Tax Officer, South Kanara, addressed to the Secretary, CT., Board of Revenue, Madras.

not in file
in 10 below

Sub: CRIMINAL CASES - MADRAS GENERAL SALES TAX ACT - South Kanara - Coondapoor Taluk and Town - Sri K. Seshu Shet - Non-payment of tax - Prosecution in C.C.No. 234/51 on the file of the Sub Divisional Magistrate - Coondapur - Appeal against. ---
Ref: Board's Ref.B.1906/52-2- dated 9-8-1952.

I submit herewith the explanation of Sri K. Varada Rao, A.C.T.O. Coondapur (since reverted) for the delay in submitting his report on the acquittal. I am taking disciplinary action against him.

11 ---

Copy of Ref.C.R.99/51-52 dated 27-6-52 from the Assistant Commercial Tax Officer, Coondapoor, addressed to the Commercial Tax Officer, South Kanara.

Sub: Criminal Justice - M.G.S.T. Act - Acquitted by the S.D.M. Coondapur on production of Stay Orders from appellate Tribunal in respect of Sri K. Seshu Shet - Explanation - Submitted.
Ref: Your Ref.C.No. 2306/52 A2 dated 20-6-52.

A.T.O.

The F2 report intimating the result of the case in C.C.No.234, 51 on the file of the S.D.M. Coondapoor, was received in my office on 9-4-52. On receipt of the F2 report I sent my clerk to the R.D.O's office to get a copy of the judgment and the concerned clerk of the R.D.O. stated many a time that the R.D.O. was on camp and as such the judgment was not available. Thinking what the clerk said might be the truth, I had to wait. One day my clerk was sent back by the R.D.O's Office with a reply that my clerk should go with an authorization letter from the A.C.T.O, Coondapoor, and accordingly an authorisation letter was sent with my clerk. But then also I was given to understand that the C.C.File containing the judgment was not forthcoming in the R.D.O's office. On 10-5-52 my clerk personally went to the R.D.O. with a letter from me to permit him to obtain a copy. Even-though permission was granted by the R.D.O. the connected file was not available. After a thorough search till 17-5-52 with the assistance of my clerk the file could be traced out and no time was wasted in obtaining a certified copy which was ready on 21-5-52.

In this connection I beg to submit that every attempt was made by my office though oral and in writing. The R.D.O's office is well aware of all these things. The delay is mainly due to the fact that the file was misplaced in R.D.O's office and I submit that it was not wanton on my part. I may kindly be excused this time.

The crime file C.R.99/51-52 containing pages 1-46 is enclosed herewith for your perusal and return. The endorsement of the then clerk of my office may be kindly perused on pages 15, 16, 37 and 38 and the delay in submission of the copy of judgment may be kindly condoned.

III

Copy of letter dated 11-8-52 from Sri K.Varadha Rao, Assistant Commercial Tax Officer, Coondapoor, addressed to the Commercial Tax Officer, South Kanara.

Sub: CRIMINAL JUSTICE - MADRAS GENERAL SALES TAX ACT - C.C.No.234/51
on the file of the Sub Divisional Magistrate - Coondapur -
Certain explanation - Submitted.
Ref: Board's Ref.B.No.1906/52-2 dated 9-8-1952.

not in file.
3
In pp 19-20
above

In continuation of my explanation dated 27-6-52 (as A.C.T.O. Coondapoor) I beg to submit as follows:

1. Soon after I received the intimation in Form F2 I ordered the clerk concerned to get a copy of the judgment on ordinary paper, and ascertain the number of stamps required just to go through it. The clerk who was entrusted with the work went to the Sub Divisional Magistrate's Court several times with frequent intervals and returned in vain. When I enquired into the cause of non-availability of the judgment I was given to understand the connected case file relating to the C.C. in question was mislaid in the Sub Divisional Magistrate's Office.

2. On 17-5-52 the Sub Divisional Magistrate's court could trace out the file with the assistance of my clerk. Immediately I applied for a certified copy of the judgment and the copy of the judgment on the ordinary paper signed by the Head clerk was received on the same day.

I had already submitted the connected crime file for the Commercial Tax Officer's perusal in support of my explanation dated 27-6-52.

I further beg to state that there were no acquittals of the kind in question at any time before in consideration and as such the instructions on the subject could not be rigidly followed. As

-3-

I was new to the post and it was the first instance, that I had come across such a case, I beg to submit that the delay was not deliberate and I may kindly be excused.

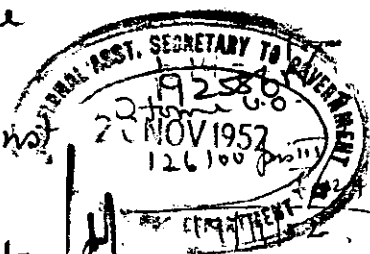
(True copy)

R. V. S. S. S.
for SECRETARY, CT.

28
13.n

Home Dept.

With reference to the memo at p14 ante, the Board of Rev C.T., Masnag has submitted copies of the explanations of the A.C.T.O., Coondapur II & I 11/8 for the delay in submitting proposals for preferring an appeal against acquittal in C.C. No 234 of 1951 on the file of the S.D.M., Coondapur. The Board of Rev has stated that the C.T.O., South Kanara is taking disciplinary action against the A.C.T.O. No action seems called for here. The file may be closed with the GO at p13 ante after perusal by Rev.



N, 80
20/11/52

18/11/52
17.11.52
18/11/52

18.11.52

J.S. 18/11/52

Rev

Rev DeptTo As

The memo on p 14 ante, the report of the Bd of Rev (C.T.) on pp 19-21 ante and the notes on p 22 ante may be perused and the file returned to Home.

ms
26/11/52

SL
26/11/52

ll
27/11/52

Home

14 on

Rev u.o No 92586 N/52-1

27/11/52

Please see the Revenue Department's note above. No further action is called for in this file. The file may be closed with the G.O. at p 13 ante.

tsr
3.12.52

lls

3.12.52

A. K. 4812



IN THE HIGH COURT OF JUDICATURE AT MADRAS

Friday, the tenth day of July,

One thousand nine hundred and fifty three

PRESENT:

The Hon'ble Mr. Justice Somasundaram.

CRIMINAL APP AL NO.456 of 1952

The Public Prosecutor

Appellant.

versus

K. Sesha Shet

..

Respondent (accused).

Appeal under section 417 of the Code of Criminal Procedure, 1898, against the order of the court of the Sub-Divisional Magistrate, Coondapur dated 31-3-1952 and passed in C. Case No. 234 of 1951 acquitting the accused above named of an offence under section 15(b) of the Madras General Sales Tax Act.

This appeal coming on for hearing on Thursday the 9th day of July and this day upon perusing the petition of appeal and the judgment of the lower court and upon hearing the arguments of the Assistant Public Prosecutor for the appellant and of Mr. F. Vittal Rao, advocate for the respondent (Accused), the Court delivered the following

JUDGMENT:- This is an appeal by the State against the acquittal of the respondent by the Sub-Divisional Magistrate, Coondapur, in C.C.No.234 of 1951 on his file. The respondent was charged before the Sub-Divisional Magistrate for an offence under section 15(b) of the Madras General Sales Tax Act that is, for the non-payment of tax amounting to Rs.2651-6-4 due for the year 1949-1950 in spite of service of the demand notice dated 12-8-1951. This notice was issued

by

by the D.C.T.O and was served on the respondent on 13-8-1951 giving three weeks' time for payment. The amount was not paid within that time. An appeal was preferred by the respondent to the C.T.O, and that was dismissed on 4-10-1951. The C.T.O gave three days' time from the date of service of the order dismissing the appeal for payment of the amount, service being on 15-10-1951. Even then the amount was not paid by the respondent. Thereafter, this complaint was filed by the A.C.T.O on 31-10-1951. Subsequent to the filing of this complaint, an appeal was preferred by the respondent to the Sales Tax Tribunal and stay was granted on 10-12-1951. The Tribunal stayed the collection of tax, by the aforesaid order. It is not disputed that the appeal has now been disposed of, dismissing the same. The lower court acquitted the accused on the ground that in the circumstances the complaint was premature and the accused could not be deemed to have committed any offence by non-payment of the tax when the matter was still pending decision of the higher officers of the Department. The view taken by the Sub Divisional Magistrate is that the A.C.T.O. should have waited till the passing of final orders by the Tribunal.

It is against this acquittal, the State has filed the above appeal. The main contention of the learned Assistant Public Prosecutor is that the fact that the respondent has got a right of appeal to the C.T.O. and thereafter to the Sales Tax Tribunal does not in any way militate against the view that the respondent has already committed the offence when the amount was not paid within the time mentioned. It is true that, if the Sales Tax Tribunal ultimately holds that no tax is payable, no offence could be considered to have been committed. But
the

But the provision 15(b) as it now stands, is intended to expedite the collection of tax by means of prosecution. If an appeal is preferred by the respondent within the time allowed to him and if at the time the Tribunal passes an order exonerating him from paying the tax, then it is most unlikely that the officers themselves would prosecute the respondent any further. On the wording of the section 15(b)

as it stands, it seems to me that when any person fails to pay within the time allowed any tax assessed on him--which here means assessed by the assessing authority, that is the

D.C.T.O, who, under the G.O., is the assessing authority in respect of incomes over Rs.20,000/--,--then the offence has

been committed. There is no need for the A.C.T.O or the D.C.T.O to wait for the assessee to exhaust all his remedies That would only mean an enormous delay in the collection of taxes to prevent which, this provision has been introduced.

The view of the learned Sub Divisional Magistrate that the complaint is premature is not correct and the acquittal of the respondent is therefore set aside. It is represented by the learned Assistant Public Prosecutor that only a sum of Rs.704/- is still due out of the tax assessed on the Respondent. The Respondent is therefore convicted and sentenced under Section 15(b) to a fine of Rs.10/- plus a sum of Rs.704/- being tax due to the Government. The appeal is therefore allowed. Time for payment of tax six weeks.

(d.) V.T. Kandaswami,
Dy.Registrar Appellate Side

(true copy)

Sub Asst.Registrar,
Appellate Side.

- To
- 1.The Sub Divisional Magistrate of Coondapur (with records)
 2. Do. through the District Magistrate of South Kanara
 - 3.The Inspector General of Police, Madras
 - 4.The Public Prosecutor, Madras (2 copies).

pag.

17/1

10th July 1953

C.A.No.456/3/52.

Public Prosecutor's Office,
High Court,
Madras; Dated: 21st July 1953.

JUDGMENT
C.A.No.456 of 1952.

13 of (V)

Forwarded to the Secretary to
Government, Home, ~~xxx~~ department,
with reference to G.O.R.No.2252-
Home, dated the 4th August 1952.

I.T. Rangaswamy
Public Prosecutor.

21/7

To
The Secretary to Government,
Home Department, Madras.

RS
21/7



Allowing the appeal of
the State against the order of
acquittal in C.C.No.234 of 1951
on the file of the S.D.M. of
Coondapur, and sentencing the
accused therein to a fine of Rs.10/-
and directing payment of Rs.704/-
being the tax due to the Government
and granting 6 weeks' time for the
payment ~~thereof~~ thereof.

[151217 C.S. IV / 53]

29
1953

Home Department

Memo NO 151217 C.S. IV / 53-2 dated 12.8.1953

Issue

Criminal justice - Appeal against acquittal - CA. NO 456 of 1952 on the file of the High Court, Madras - Copy of judgment Communicated

p 13 of (v)

p 4 CF.

Ref G.O. R. NO 2252 Home, d 4.8.1952
From the P.P., Madras NO
CA. 456/3/52 dated 21.7.1953

pp. 1-3 CF

Undl was

20

17.8.53

To ✓ The Board of Revenue C.T.,
Madras.

Copy to the Revenue Dept.
(with copy of pp 1-3 CF. to both)

A copy of the judgment
CA. NO 456 of 1952 on the file
of the High Court, Madras is
communicated to the Board of
Revenue, C.T., Madras

(SR)
27.7.1953

27.7.53

12 Aug 53

988
27.7.53

{ note: }

note:- Revenue may see before issue
of the ^{draft} memorandum overleaf.

1/5/53
27.7.1953
27.7.53

488
27.7.53

Rev.

Rev. W. H. H.

To: AS

The draft memo overleaf may be perused and the file returned to Home.

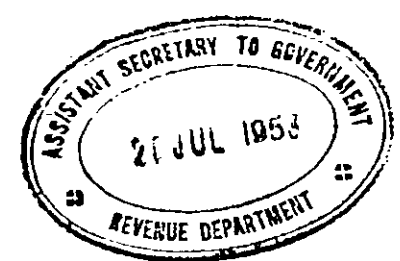
NOT
30/7/53
30/7/53

Does not this judgment set at rest the question raised in similar cases viz. whether appeal can be filed in cases where the law is not clear from a registered? Please examine.

21.7.53

N

Home no.
157217 C. S. IV / 53-1
dated 28th July 1953
63980M
29.7.53
N3
29/7/53

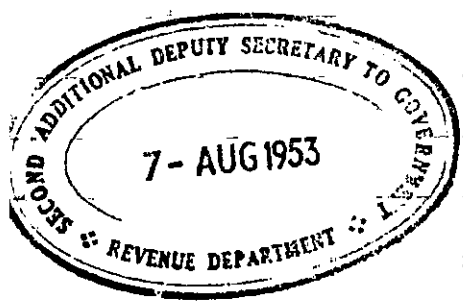


Home

To A-S

A on page 2 ante. Submitted. Assistant Secretary is apparently referring to the case dealt with in the top file where the question whether an appeal can be filed against an order of acquittal passed by a Magistrate on the ground that no offence under Section 15 (b) of the M. Cr. S. T. Act can be said to have been committed in cases where the appellate authority has granted time for payment of the tax due in instalments has been raised. In its judgment in the CF, the High Court has held ^{that} the view of the Magistrate that an offence has not been committed is not correct. Accordingly it appears that in similar cases where Magistrates have acquitted the accused on the ground that no offence has been committed, appeals can be filed against such acquittals. Legal may advise on this point.

2. The file may be returned to Home through Legal and they may be requested to communicate a copy of the judgment in the CF to this Dept. also.



6/8/53

6/8/53

12/8/53
7.8.53

Rev U.O. 63980N/13
7.8.53

Legal/Home

Legn 12956
7.8.53
5.30 P.M.

4
LEGAL (OPINIONS) DEPARTMENT.

The facts of the present judgment can be distinguished from those of the case in top file. Here the question is whether the Sales Tax Authorities are bound to await the results of the appeal before launching a prosecution for non-payment. The High Court answered the question in the negative. The appeal against the assessment had been dismissed when the appeal against the acquittal was heard. However, we may infer — the facts are not very clear — that when the prosecution was pending the stay granted by the High Court was operative. If so the principle is in our favour. It does not appear that the case decided in S.V. Krishta Pillai In re, reported in Sales Tax Cases, Volume I (1938-50) page 239, was brought to the notice of the Court and considered. However we may take advantage of this and try if the High Court could be persuaded to reverse its earlier decision referred to above and therefore file an appeal in the case in the top file. If we succeed it is good for us and it is worthwhile taking the risk.

CS
10.8.53

10
10.8
T.S.

Leg. No. 12956/B
78/53

The draft memo at pl. ante may issue. After issue, the papers may be filed with the G.O. at (U)

180
12.8.1953

8
12/8/53

188
12/8/53

DS
12 Aug 53

